

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

**Replacement of Part 90 by Part 88 to
Revise the Private Land Mobile Radio
Services and Modify the Policies
Governing Them**

and

**Examination of Exclusivity and
Frequency Assignment Policies of
the Private Land Mobile Radio Services**

AUG 11 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PR Docket No. 92-235

DOCKET FILE COPY ORIGINAL

To: The Commission

Request for Stay

The Land Mobile Communications Council ("LMCC"), by its attorneys and pursuant to Section 1.43 of the Commission's Rules, 47 C.F.R. § 1.43, hereby respectfully requests that the Federal Communications Commission ("FCC" or the "Commission") stay the effectiveness, for a period of six (6) months, of the provisions contained in the Report and Order and Further Notice of Proposed Rulemaking ("Report and Order") in the above-referenced proceeding, regarding the Commission's licensing of new 12.5 kHz channels in the 150-174 MHz and 421-512 MHz bands.

The Request for Stay ("Request") will help to ensure a fair and efficient licensing process during the transition period for implementation of the new channelling plan adopted by the Commission's Report and Order. Further, LMCC believes the Request sufficiently

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meets the established criteria necessary to sustain a grant of stay.

LMCC's membership includes a variety of national associations representing users of the radio spectrum for both private and common carrier purposes. Specifically, LMCC's membership includes the following organizations:

- American Association of State Highway and Transportation Officials
- American Automobile Association
- American Mobile Telecommunications Association
- American Petroleum Institute
- American Trucking Associations, Inc.
- Association of American Railroads
- Association of Public-Safety Communications Officials-International, Inc.
- Cellular Telecommunications Industry Association
- Forestry-Conservation Communications Association
- Industrial Telecommunications Association, Inc.
- International Association of Fire Chiefs
- International Association of Fish and Wildlife Agencies
- International Municipal Signal Association
- International Taxicab and Livery Association
- Manufacturers Radio Frequency Advisory Committee, Inc.
- National Association of State Foresters
- Personal Communications Industry Association
- Telecommunications Industry Association
- Utilities Telecommunications Council

I. Background

The Report and Order implements the Commission's broad policy to encourage more efficient use of private land mobile radio ("PLMR") spectrum. To that end, the Report and Order adopts a narrowband channel plan which will eventually require the implementation by PLMR users of narrowband or equivalent spectrum-efficient technology in the 150-174 MHz and 421-512 MHz bands.

With respect to licensing, the Commission stated in the Report and Order that it will begin the acceptance of applications for new 7.5 kHz channels in the VHF band, and for 6.25 kHz channels in the UHF band one (1) year from the effective date of the Report and Order.¹ The Commission reasoned that implementing the narrowband channelization in this manner would permit frequency coordinators sufficient opportunity to establish appropriate procedures and separation guidelines with which to evaluate the applications for potential interference to incumbent licensees. LMCC believes this approach is prudent and in the public interest. For similar reasons, LMCC also believes there should be a period of adjustment between the effectiveness of the Commission's rules and the acceptance of new applications for the licensing of new 12.5 kHz wide channels in the band 450-470 MHz. Absent such a delay, applications for these new channels would be filed immediately upon effectiveness of the Report and Order.

Accordingly, LMCC seeks a stay of the provision in the Report and Order to delay the acceptance of applications for the new 12.5 kHz channels in the UHF band until six (6) months following the effectiveness of the Commission's new rules.

II. Criteria to Establish a Request for Stay

A request for stay must establish: (1) the presence of irreparable harm; (2) the absence of harm to other interested parties; (3) public interest considerations favoring a stay; and (4) the likelihood of success on the merits. Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)(“Metro. Area Transit”); Virginia

¹ Report and Order, at ¶ 41.

Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). Because there is no underlying litigation to LMCC's Request, and therefore no issue with respect to prevailing on the merits, this pleading will address only the first three criteria necessary to sustain a stay of effectiveness.

A. *Licenses Granted Without Proper Frequency Coordination Would Cause Irreparable Harm.*

LMCC is concerned that, in the absence of a stay, irreparable harm would result from the acceptance and processing of applications for the new 12.5 kHz channels in the UHF band prior to the establishment of uniform, safe and effective frequency coordination guidelines. A license granted without sufficient analysis with respect to its impact on surrounding licensees could cause harmful, or even dangerous, interference to existing PLMR licensees, particularly to existing low-power (two-watt) stations. This is critically significant to the public safety, industrial and transportation users within the PLMR bands who depend upon their communications systems to support safety of life and property. Further, the harm caused by such interference could be *irreparable* in that a new licensee in the PLMR bands is permitted eight (8) months in which to construct and place its system in operation.² Harmful interference, therefore, might not become apparent until well after the Commission's opportunity to set aside the grant has passed.³

As the Commission mandated with new applications for 6.25 and 7.5 kHz channels, the frequency coordinators must be given sufficient time to review the Commission's rules

² 47 C.F.R. § 90.155.

³ 47 C.F.R. § 1.117.

and study the potential technical and operational implications to formulate appropriate procedures and separation guidelines with which to evaluate applications for potential interference to incumbent licensees. LMCC is thus requesting an additional six (6) months during which frequency coordinators will review and analyze the relevant issues and concerns to adequately prevent any harmful or dangerous interference to existing licensees.

B. *A Delay In Licensing of 12.5 kHz Channels Will Not Harm Other Parties and Serves the Public Interest.*

Applicants for new stations in the 12.5 kHz band who must wait to file applications until the frequency coordinators can establish uniform and safe operational and separation guidelines will benefit, rather than be harmed, by the six (6) month delay proposed by LMCC. Specifically, applicants will benefit by having clear standards and criteria with which to prepare their applications. Furthermore, licenses issued in reliance upon thorough frequency coordination will be less vulnerable to challenges or revocation due to harmful interference. Uncertainty with respect to the operational capabilities of a station is particularly damaging to the licensee where newly developed and costly equipment must be purchased and installed.

To the extent that there is no harm, but rather benefit, to other parties by the Commission's grant of LMCC's Request, the Request is in the public interest. The Commission's grant of this Request will aid in the establishment of a fair and safe frequency coordination process which will ensure the efficient processing of applications for this new spectrum, with less likelihood that the licenses granted will cause harmful interference. An

effective frequency coordination process will, in turn, effectively preserve scarce Commission resources by reducing the number of administrative challenges or appeals to licenses granted in error.

III. Conclusion

LMCC seeks a stay of the effectiveness, for an additional six (6) months, of the provisions in the Commission's Report and Order which will permit applicants to file applications for 12.5 kHz channels immediately upon effectiveness of the Commission's new rules. LMCC seeks this stay to permit a thorough review and analysis of all operational and technical issues of narrowband licensing to ensure that there will be no harmful or dangerous interference from incomplete frequency coordination. This Request, if granted, poses no harm to other parties, is in the public interest and prevents the potential irreparable harm of incomplete frequency coordination.

WHEREFORE, for the reasons herein stated, LMCC respectfully requests that the Commission stay the effectiveness of certain provisions of its Report and Order for a period of six (6) months from the effective date of this decision.

Respectfully submitted,

LAND MOBILE COMMUNICATIONS COUNCIL

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Dated: August 11, 1995

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